



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Paulk's Moving & Storage of Mobile, Inc.--Request
for Reconsideration
File: B-229759.3

Date: March 4, 1988

DIGEST

Request for reconsideration of decision dismissing as untimely a protest challenging nonresponsibility determination because it was filed more than 10 working days after protester learned of adverse agency action is denied where protester fails to present evidence that original decision was based on error of law or fact.

DECISION

Paulk's Moving & Storage of Mobile, Inc., requests reconsideration of our dismissal of its protest as untimely in our decision Paulk's Moving & Storage of Mobile, Inc., B-229759.2, Jan. 29, 1988, 88-1 CPD ¶ 90, concerning invitation for bids (IFB) No. DABT01-87-B-1053, issued by the Department of the Army, Ft. Rucker, Alabama. We deny the request for reconsideration.

In its original protest, Paulk's contended that the Army erred in finding it nonresponsible based upon a preaward survey which found that Paulk's would not be a legal entity at the planned time of award. In regard to the timeliness of its protest, Paulk's also claimed they had filed an initial protest with the agency. The Army denied there had been a valid agency-level protest, but argued that the protest to our Office was untimely in any event. We agreed with the Army, concluding that, even if there was a valid agency protest, Paulk's December 21 filing with our Office was untimely since the record showed Paulk's was aware of adverse agency action no later than December 3.

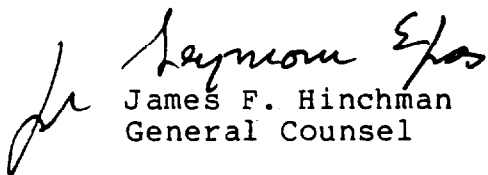
In its request for reconsideration, Paulk's asserts that our finding that it had notice of adverse agency action on December 3 was in error, as the Army response it received was dated December 8. Paulk's is simply incorrect based on the record. As explained in our prior decision, the Army

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sent a letter to Paulk's dated November 24, restating its position (originally expressed in detail to Paulk's in an October 29 letter) that Paulk's bid was unacceptable and that the award had been made. As Paulk's alleged agency level protest was made by letter dated November 5, this Army response clearly constituted adverse agency action. The record did not indicate the date Paulk's received the November 24 letter, but did show that Paulk's sent the Army a letter dated December 3, specifically referring to the Army's contract award and the Army's "recent letter" advising that Paulk's bid had been rejected. The record included no evidence of a December 8 letter from the Army, and even if there was such a letter, it was clear from Paulk's own letter that Paulk's nevertheless was aware on December 3 that the agency had rejected Paulk's bid and awarded a contract. We therefore reiterate our conclusion that Paulk's protest filed more than 10 working days after December 3 was untimely.

Paulk's argues that its protest should be decided, not on the basis of timeliness, but upon the merits. The timeliness provisions of our Bid Protest Regulations, 4 C.F.R. Part 21 (1987), are designed to give parties a fair opportunity to present their cases and have them expeditiously resolved without unduly disrupting or delaying the procurement process. Conveyor Handling Company, Inc., et al., B-222889, et al., July 22, 1986, 86-2 CPD ¶ 93. The timeliness requirements are not a trivial matter but, rather, are an important factor in implementing that policy, and they will not be waived under the circumstances here.

The request for reconsideration is denied.


James F. Hinchman
General Counsel